

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.4608 of 2002.

B.S. Rath.

..Petitioner

vs

Union of India and Ors.

..Respondents

Mr B.S. Rath, petitioner in person- present.

Mr. Suresh Kumar for respondents.

CORAM: H.S. BEDI. C.J. &

V.M.KANADE, J.

Reserved on November 2006

Pronounced on December, 2006

Judgment: (Per Chief Justice)

1. This petition is directed against a common order dated 15th February 2002, passed by the Central Administrative Tribunal whereby three Original Application Nos. 1090 of 1994, 7 of 1996 and 108 of 1998 have been dismissed. The facts have been taken from the Original Application No.1090 of 1994.

2. The petitioner, Mr.B.S. Rath was working as a Motorman on the Bombay Division of Western Railway and was on duty on 8th August 1992. When he stopped his train at Naigaon

Railway Station, the train shot ahead by 22 meters. It appears that some complaints were thereafter made against him by some passengers as well as the Station Master at Naigaon Railway Station. The petitioner was served with a charge sheet Exhibit F of the petition on the ground that he had overshot his train at the stop mark at the platform on 8th August 1992 and after departmental proceedings a penalty of withholding of privilege of one set of passes as and when due vide order dated 14th December 1993 Exhibit L (in compilation handed over by the petitioner) was imposed. It appears that the petitioner also remained absent without sanctioned leave with effect from 25th June 1993 to 23rd January 1995 for which he was served with a charge sheet and an order dated 9th April 1997 Exhibit U (in the writ petition) was made imposing a penalty of reduction to lower time scale of Rs. 1600 – 2660 (RP-S). The orders at Exhibits L and U aforementioned were challenged in a departmental appeal which was dismissed against which Original Application No.1090 of 2004 was filed by the petitioner before the tribunal, which was dismissed. It is the case of the respondents that after the incident of 8th August, 1992 the petitioner was called upon by letter dated 9th November 1995 to produce a medical fitness certificate as per the prescribed

procedure but the petitioner declined to produce such certificate and on the contrary challenged those proceedings by way of Original Application No. 7 of 1995. As already mentioned above all these matters came up for hearing before the tribunal and have been dismissed by the impugned order.

3. The respondents filed their written statement before the tribunal alongwith several documents to show that the incident of overshooting at Naigaon Station took place when the petitioner was the motorman causing great inconvenience to the passengers. It has been pleaded that a motorman was always sent to a Safety camp as per the procedure of the department in such a situation and that the petitioner who was a leader of a railway union refused to attend the camp but instead organised a morcha at the D.R.M's office and instigated his co-employees to take part in an agitation causing confusion in the operation of the railways.

4. The tribunal proceeded with the matter and observed that it was clear from the letter dated 2nd March 1993 that the petitioner himself had admitted the incident and his default in

overshooting and the story which he was now seeking to project that this had happened because of a failure of brakes was an after thought and could not be believed. The tribunal also examined the other arguments raised by the petitioner and his counsel and observed that the tribunal was not an appellate authority and could not deal with the matter as an appellate court and could interfere only if the impugned order was perverse or if the principles of natural justice had been breached. The tribunal accordingly observed that the arguments raised on behalf of the petitioner clearly amounted to an attempt at a re-appreciation of evidence which was clearly impermissible in law and dismissed the petition.

5. Mr. Rath, the petitioner in person, has argued that an employee could not be punished merely on his alleged confession without any other credible evidence and material on record. In this regard he has placed reliance on the decision in *Natvarbhai S Makwana vs Union Bank of India and ors*, reported in 1985 Labour Industries Cases 422. He has also pleaded that his evidence both documentary and oral that the over shooting took place on account of a failure of brakes had been rejected for no cogent reasons. He has also referred to certain documents on the file to contend that

the braking system used on Western Railway was faulty and outdated and that this fact has been pointed out to the respondents time and again without any positive result.

6. We have heard the learned counsel for the respondents and noted the observations of the tribunal that a court and more particularly a writ court is not an appellate authority so as to re-examine and re-appraise the evidence on record. We find that all the charges against the petitioner are interconnected with the main charge of the incident of overshooting on 8th August 1992. During the course of the arguments the petitioner could not point out any flaw in the enquiry proceedings held against him or how he was prejudiced in his defence. Prima facie in the face of the fact that the petitioner had himself confessed to the overshooting nothing can be said in his defence. The judgment in the case of Natvarbhai S. Makwana (supra) does not help the case of the petitioner whatsoever. In the cited case a particular charge had not been framed against the petitioner and it was in that situation the court observed that even a confession made could not be used against him as the facts in the confession related to a matter for which he had not been charged. In the case before us we find that the charge of

overshooting was the main charge against the petitioner and this fact has been admitted by the petitioner though he has attempted to shift the blame on the department.

7. The respondents in their reply had stated that they had not taken the petitioner on duty as he had refused to comply with the letter dated 9th November 1995 calling upon him to submit a medical fitness certificate as required by the instructions in case of persons who had been absent from duty. It was stated in the said reply that the petitioner was free to present himself before the medical officer and get a medical fitness certificate so that he could resume duty but he did not do even then.

8. Concededly the petitioner was absent from duty for the period above mentioned and no satisfactory explanation has been given as to why he had remained so. We see from the record that the respondents were not unjustified in asking him to produce a medical fitness certificate. The petitioner has referred to some other persons who had apparently suffered a similar mishap and had not been asked to produce a medical fitness certificates. We are of the opinion that this matter must be left entirely to the railway

administration as it is the best judge to opine on this issue as it relates to the safety of the travelling public. We are thus in full agreement with the findings of the tribunal and dismiss this petition.

CHIEF JUSTICE

V.M.KANADE,J.